1332 State Innovation Waivers and the Executive Order on Insurance

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- State examples
1332 Waivers - Overview

• Section 1332 of the Affordable Care Act establishes a “state innovation” waiver program

  • Allows states to waive certain ACA requirements in service of state-specific strategies that improve coverage

  • A new program: waivers could take effect only starting in 2017

  • Applications must be approved by HHS and Treasury
What Can Be Waived…

• Essential Health Benefits (EHBs)
  • The benefit package; limitations on cost-sharing; metal tier levels
    • Subject to guardrail limits

• Premium and Cost-Sharing Subsidies

• Marketplace Rules, such as:
  • Whether or not to have a marketplace
  • Qualified Health Plan (QHP) Certification
  • Enrollment Periods

• Individual and Employer Mandates

• Single Risk Pool Requirements

…And What Can’t

• ACA’s nondiscrimination rules

• Protections for people with preexisting conditions

• Prohibitions on health status and gender rating

• Prohibitions on annual and lifetime limits

• Guaranteed issue requirement

• Requirement to cover certain preventive services
The 1332 “Guardrails”

- Proposed waiver vs. baseline
  - World with the waiver, vs. world without it

- Waiver cannot be granted unless it:
  - Provides coverage at least as comprehensive as the Essential Health Benefits (EHBs)
  - Provides coverage at least as affordable, in terms of both premiums and cost-sharing
  - Covers a comparable number of residents
  - Does not increase the federal deficit

- Guardrails are a hard limit on state waiver authority.

CMS Guidance (2015):

Guardrails

- Explained that the guardrails require federal officials to consider both:
  - Overall impact of waiver on state residents and
  - Any disparate effects it could have on vulnerable populations: low-income, older and sicker residents

- Clarified that deficit neutrality:
  - Is measured both for a 10-year period and year-to-year
  - Calculations cannot take into account any Medicaid savings
CMS Guidance (2015):
Operational Limitations

• The federal platform (HealthCare.gov) cannot accommodate different marketplace rules for different states
  • States using HealthCare.gov that are considering waivers of marketplace rules would need to move to their own platform

• IRS is unable to administer different sets of tax rules in different states
  • For example, IRS cannot administer a different set of eligibility rules for the premium tax credit for residents of a particular state

The Waiver Process

• Authorizing legislation required

• State notice and comment and stakeholder consultation requirements

• Applications must include, among other things, actuarial and economic analyses showing compliance with guardrails; a draft implementation timeline

• Once an application is submitted, feds have 45 days to determine whether the application is complete

• Upon determination of completeness, feds have 180 days to issue a final decision on the waiver
Status of State Waivers (12/01/2017)

- Waiver approved – AK, HI, MN, OR
- Applications not deemed complete – MA, VT
- States that have withdrawn applications – CA, IA, OK
- States that have released a draft waiver – NH, ID
- States that have enacted authorizing legislation – KY, ME, OH, RI, TX

Source: Data collection and analysis as of December 1, 2017 by researchers at the Center on Health Insurance Reforms, Georgetown University Health Policy Institute.
**Approved Waivers**

- State reinsurance programs
  - Alaska
    - Implements the Alaska Reinsurance Program and covers claims for individuals with one or more of 33 high-cost conditions
  - Minnesota
    - Implements state-based reinsurance program and covers 80% of individual's annual claims costs between $50,000 and $250,000
  - Oregon
    - Implements state-based reinsurance program and covers 50% of high-cost enrollee claims up to $1 million
- Aligning ACA with existing state programs
  - Hawaii
    - Waives SHOP (small business health options program) requirements

**Proposed Federal Legislative Changes to 1332**

**Alexander-Murray Bill: Procedural Changes**

- Allows application submission without state authorizing legislation
- Requires guidance on approvable waivers
- Reduces the timeframe for waiver approval from 180 days to 90 days
- Fast-track for copycat waivers, emergency situations
Proposed Federal Legislative Changes to 1332

**Alexander-Murray Bill: Guardrail Changes**

- Affordability guardrail:
  - “At least as affordable” changed to “of comparable affordability”
  - Codifies the “vulnerable populations” language from 2015 federal guidance

- Deficit neutrality guardrail:
  - Loosens to make it easier for states to combine Medicaid 1115 waivers with 1332
Going Beyond Reinsurance to Operations

• Three of the four 1332 waivers that have been approved to date support state requests to improve and stabilize the insurance market and lift up the risk pools (Alaska, Minnesota, Oregon)
• The more complicated waivers have asked for changes that require a technical update to the CMS* infrastructure.
• These types of changes usually require funding, updates to contracting, and often, a full development lifecycle.
• Much like the runway that the same types of requests require in a state, these types of requests take time and planning.

* Centers for Medicare and Medicaid Services
How to Get There from Here

If states have interest in migration functionality from the federally facilitated operations platform – it is important to understand the level of effort for each task as it pertains to your individual state systems and readiness.

The most effective way to encourage change to a system of that size is via consensus with a lot of runway and in a prioritized fashion with the most impactful, important requirements at the top of the list.
- Conduct state readiness assessments
- Prioritize need
- Develop a plan
- Signal requirement - engage early with CMS prior to submitting the 1332 Request

1332 Complexity Continuum/Keys to Success

- Enrollment entry points
- Communications and marketing
- Subsidy structures
- Essential Health Benefits (EHBs)
- Cost-sharing reduction (CSR) changes
- Premium tax credit changes
- Auto re-enrollment
- Full ownership
Readiness Assessment

- What level of operations are you willing to subsume?
- Medicaid integration - What problems need to be solved near term vs. long term?
- Multi-year implementation/migration
- What data do you need from CMS?
- CMS final approval
- Complete Operational Readiness Review

Prioritize and Consolidate

What needs do most states have in common?  
What consolidation of needs can occur?  
How soon can HHS support the top requirements
  - Medicaid integration
  - Enrollment flexibility
  - Multi-year implementation?
  - Data migration
  - Auto enrollment flexibilities
Engage + Submit

- Early collaboration with CMS is key
- Signal intent and desire
- Understand limitations early
- Understand roadmap for increased functionality
- Map federal timeline to state requirements
- Plan/implement
- What is the annual cutoff for change?